

NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF
1996

SEPTEMBER 28, 1996.—Ordered to be printed

Mr. BLILEY, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 3005]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3005), to amend the Federal securities laws in order to promote efficiency and capital formation in the financial markets, and to amend the Investment Company Act of 1940 to promote more efficient management of mutual funds, protect investors, and provide more effective and less burdensome regulation, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “National Securities Markets Improvement Act of 1996”.

(b) *TABLE OF CONTENTS.*—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Severability.

TITLE I—CAPITAL MARKETS

Sec. 101. Short title.

Sec. 102. Creation of national securities markets.

Sec. 103. Broker-dealer exemptions from State law.

Sec. 104. Broker-dealer funding.

Sec. 105. Exemptive authority.

Sec. 106. Promotion of efficiency, competition, and capital formation.

- Sec. 107. Privatization of EDGAR.*
- Sec. 108. Improving coordination of supervision.*
- Sec. 109. Increased access to foreign business information.*

TITLE II—INVESTMENT COMPANY ACT AMENDMENTS

- Sec. 201. Short title.*
- Sec. 202. Funds of funds.*
- Sec. 203. Flexible registration of securities.*
- Sec. 204. Facilitating use of current information in advertising.*
- Sec. 205. Variable insurance contracts.*
- Sec. 206. Reports to the Commission and shareholders.*
- Sec. 207. Books, records, and inspections.*
- Sec. 208. Prohibition on deceptive investment company names.*
- Sec. 209. Amendments to definitions.*
- Sec. 210. Performance fees exemptions.*

TITLE III—INVESTMENT ADVISERS SUPERVISION COORDINATION ACT

- Sec. 301. Short title.*
- Sec. 302. Funding for enhanced enforcement priority.*
- Sec. 303. Improved supervision through State and Federal cooperation.*
- Sec. 304. Interstate cooperation.*
- Sec. 305. Disqualification of convicted felons.*
- Sec. 306. Investor access to information.*
- Sec. 307. Continued State authority.*
- Sec. 308. Effective date.*

TITLE IV—SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION

- Sec. 401. Short title.*
- Sec. 402. Purposes.*
- Sec. 403. Authorization of appropriations.*
- Sec. 404. Registration fees.*
- Sec. 405. Transaction fees.*
- Sec. 406. Time for payment.*
- Sec. 407. Sense of the Congress concerning fees.*

TITLE V—REDUCING THE COST OF SAVING AND INVESTMENT

- Sec. 501. Exemption for economic, business, and industrial development companies.*
- Sec. 502. Intrastate closed-end investment company exemption.*
- Sec. 503. Definition of eligible portfolio company.*
- Sec. 504. Definition of business development company.*
- Sec. 505. Acquisition of assets by business development companies.*
- Sec. 506. Capital structure amendments.*
- Sec. 507. Filing of written statements.*
- Sec. 508. Church employee pension plans.*
- Sec. 509. Promoting global preeminence of American securities markets.*
- Sec. 510. Studies and reports.*

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) the term “Commission” means the Securities and Exchange Commission; and

(2) the term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE I—CAPITAL MARKETS

SEC. 101. SHORT TITLE.

This title may be cited as the “Capital Markets Efficiency Act of 1996”.

SEC. 102. CREATION OF NATIONAL SECURITIES MARKETS.

(a) IN GENERAL.—Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) is amended to read as follows:

“SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

“(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

“(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

“(A) is a covered security; or

“(B) will be a covered security upon completion of the transaction;

“(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

“(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

“(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

“(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

“(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

“(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

“(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

“(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

“(C) is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

“(2) *EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.*—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

“(3) *SALES TO QUALIFIED PURCHASERS.*—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term ‘qualified purchaser’ differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

“(4) *EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.*—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

“(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

“(B) section 4(4);

“(C) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4) or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

“(D) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996.

“(c) *PRESERVATION OF AUTHORITY.*—

“(1) *FRAUD AUTHORITY.*—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.

“(2) *PRESERVATION OF FILING REQUIREMENTS.*—

“(A) *NOTICE FILINGS PERMITTED.*—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

“(B) *PRESERVATION OF FEES.*—

“(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of the Capital Markets Efficiency Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.”

“(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).”

“(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

“(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Market Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).”

“(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.”

“(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).”

“(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.”

“(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) OFFERING DOCUMENT.—The term ‘offering document’—

“(A) has the meaning given the term ‘prospectus’ in section 2(10), but without regard to the provisions of subparagraphs (A) and (B) of that section; and

“(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.”

“(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the Securities Amendments Act of 1996, the Commission shall, by rule, define

the term 'prepared by or on behalf of the issuer' for purposes of this section.

"(3) STATE.—The term 'State' has the same meaning as in section 3 of the Securities Exchange Act of 1934.

"(4) SENIOR SECURITY.—For purposes of this paragraph, the term 'senior security' means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends."

(b) STUDY AND REPORT ON UNIFORMITY.—The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933, as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the Congress on the results of such study.

SEC. 103. BROKER-DEALER EXEMPTIONS FROM STATE LAW.

(a) IN GENERAL.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(h) LIMITATIONS ON STATE LAW.—

"(1) CAPITAL, MARGIN, BOOKS AND RECORDS, BONDING, AND REPORTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

"(2) DE MINIMIS TRANSACTIONS BY ASSOCIATED PERSONS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from affecting a transaction described in paragraph (3) for a customer in such State if—

"(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

"(B) such associated person is registered with a registered securities association and at least one State; and

"(C) the broker or dealer with which such person is associated is registered with such State.

"(3) DESCRIBED TRANSACTIONS.—

"(A) IN GENERAL.—A transaction is described in this paragraph if—

"(i) such transaction is effected—

“(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

“(II) by an associated person of the broker or dealer—

“(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

“(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction;

“(ii) the transaction is effected—

“(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintains an account with the broker or dealer; and

“(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

“(aa) 60 days after the date on which the application is filed; or

“(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

“(B) RULES OF CONSTRUCTION.—For purposes of subparagraph (A)(i)(II)—

“(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

“(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the association person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer’s residence.”.

(b) TECHNICAL AMENDMENT.—Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended by striking “Nothing” and inserting “Except as otherwise specifically provided in this title, nothing”.

SEC. 104. BROKER-DEALER FUNDING.

(a) MARGIN REQUIREMENTS.—

(1) EXTENSIONS OF CREDIT BY BROKER-DEALERS.—Section 7(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)) is amended to read as follows:

“(c) UNLAWFUL CREDIT EXTENSION TO CUSTOMERS.—

“(1) PROHIBITION.—It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

“(A) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ‘Board’) shall prescribe under subsections (a) and (b); and

“(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

“(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

“(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

“(2) EXCEPTION.—This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

“(A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

“(B) to finance its activities as a market maker or an underwriter;

except that the Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.”.

(2) EXTENSIONS OF CREDIT BY OTHER LENDERS.—Section 7(d) of the Securities Exchange Act of 1934 (78 U.S.C. 78g(d)) is amended to read as follows:

“(d) UNLAWFUL CREDIT EXTENSION IN VIOLATION OF RULES AND REGULATIONS; EXCEPTION TO APPLICATION OF RULES, ETC.—

“(1) PROHIBITION.—It shall be unlawful for any person not subject to subsection (c) to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) and the rules and regulations thereunder.

“(2) EXCEPTIONS.—This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged—

“(A) by a person not in the ordinary course of business;

“(B) on an exempted security;

“(C) to or for a member of a national securities exchange or a registered broker or dealer—

“(i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

“(ii) to finance its activities as a market maker or an underwriter;

“(D) by a bank on a security other than an equity security; or

“(E) as the Board shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

“(3) BOARD AUTHORITY.—The Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.”.

(b) BORROWING BY MEMBERS, BROKERS, AND DEALERS.—Section 8 of the Securities Exchange Act of 1934 (15 U.S.C. 78h) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

SEC. 105. EXEMPTIVE AUTHORITY.

(a) GENERAL EXEMPTIVE AUTHORITY UNDER THE SECURITIES ACT OF 1933.—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by adding at the end the following new section:

“SEC. 28. GENERAL EXEMPTIVE AUTHORITY.

“The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation issued under this title, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”.

(b) GENERAL EXEMPTIVE AUTHORITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.

“(a) AUTHORITY.—

“(1) IN GENERAL.—Except as provided in subsection (b), but notwithstanding any other provision of this title, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any

class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

“(b) LIMITATION.—The Commission may not, under this section, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from section 15C or the rules or regulations issued thereunder or (for purposes of section 15C and the rules and regulations issued thereunder) from any definition in paragraph (42), (43), (44), or (45) of section 3(a).”.

SEC. 106. PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.

(a) SECURITIES ACT OF 1933.—Section 2 of the Securities Act of 1933 (15 U.S.C. 77b) is amended—

(1) by inserting “(a) DEFINITIONS.—” after “SEC. 2.”; and

(2) by adding at the end the following new subsection:

“(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

“(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2) is amended by adding at the end the following new subsection:

“(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”.

SEC. 107. PRIVATIZATION OF EDGAR.

(a) EXAMINATION.—The Commission shall examine proposals for the privatization of the EDGAR system. Such examination shall

promote competition in the automation and rapid collection and dissemination of information required to be disclosed. Such examination shall include proposals that maintain free public access to data filings in the EDGAR system.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to the Congress a report on the examination under subsection (a). Such report shall include such recommendations for such legislative action as may be necessary to implement the proposal that the Commission determines most effectively achieves the objectives described in subsection (a).

SEC. 108. IMPROVING COORDINATION OF SUPERVISION.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsection:

“(i) COORDINATION OF EXAMINING AUTHORITIES.—

“(1) ELIMINATION OF DUPLICATION.—The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

“(2) COORDINATION OF EXAMINATIONS.—The Commission and the examining authorities shall share such information, including reports of examinations, customer complaint information, and other nonpublic regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of brokers and dealers that are subject to examination by more than one examining authority.

“(3) EXAMINATIONS FOR CAUSE.—At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

“(4) CONFIDENTIALITY.—

“(A) IN GENERAL.—Section 24 shall apply to the sharing of information in accordance with this subsection. The Commission shall take appropriate action under section 24(c) to ensure that such information is not inappropriately disclosed.

“(B) APPROPRIATE DISCLOSURE NOT PROHIBITED.—Nothing in this paragraph authorizes the Commission or any examining authority to withhold information from the Congress, or prevent the Commission or any examining authority from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

“(5) DEFINITION.—For purposes of this subsection, the term ‘examining authority’ means a self-regulatory organization registered with the Commission under this title (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.”.

SEC. 109. INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION.

Not later than 1 year after the date of enactment of this Act, the Commission shall adopt rules under the Securities Act of 1933 concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities.

TITLE II—INVESTMENT COMPANY ACT AMENDMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the “Investment Company Act Amendments of 1996”.

SEC. 202. FUNDS OF FUNDS.

Section 12(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-12(d)(1)) is amended—

(1) in subparagraph (E)(iii)—

(A) by striking “in the event such investment company is not a registered investment company,”; and

(B) by inserting “in the event that such investment company is not a registered investment company,” after “(bb)”;

(2) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively;

(3) by striking “this paragraph (1)” each place that term appears and inserting “this paragraph”;

(4) by inserting after subparagraph (F) the following new subparagraph:

“(G)(i) This paragraph does not apply to securities of a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the ‘acquired company’) purchased or otherwise acquired by a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the ‘acquiring company’) if—

“(I) the acquired company and the acquiring company are part of the same group of investment companies;

“(II) the securities of the acquired company, securities of other registered open-end investment companies and registered unit investment trusts that are part of the same group of investment companies, Government securities, and short-term paper are the only investments held by the acquiring company;

“(III) with respect to—

“(aa) securities of the acquired company, the acquiring company does not pay and is not assessed any charges or fees for distribution-related activities, unless the acquiring company does not charge a sales load or other fees or charges for distribution-related activities; or

“(bb) securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired fund, are not excessive under rules adopted

pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission;

“(IV) the acquired company has a policy that prohibits it from acquiring any securities of registered open-end investment companies or registered unit investment trusts in reliance on this subparagraph or subparagraph (F); and

“(V) such acquisition is not in contravention of such rules and regulations as the Commission may from time to time prescribe with respect to acquisitions in accordance with this subparagraph, as necessary and appropriate for the protection of investors.

“(ii) For purposes of this subparagraph, the term ‘group of investment companies’ means any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.”; and

(5) by adding at the end the following new subparagraph:

“(J) The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this subsection, if and to the extent that such exemption is consistent with the public interest and the protection of investors.”.

SEC. 203. FLEXIBLE REGISTRATION OF SECURITIES.

(a) AMENDMENTS TO REGISTRATION STATEMENTS.—Section 24(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(e)) is amended—

(1) by striking paragraphs (1) and (2);

(2) by striking “(3) For” and inserting “For”; and

(3) by striking “pursuant to this subsection or otherwise”.

(b) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—Section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:

“(f) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—

“(1) REGISTRATION OF SECURITIES.—Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933, a face-amount certificate company, open-end management company, or unit investment trust, shall be deemed to have registered an indefinite amount of securities.

“(2) PAYMENT OF REGISTRATION FEES.—Not later than 90 days after the end of the fiscal year of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933, based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount of securities under this subsection during the previous fiscal year of the company or trust, reduced by—

“(A) the aggregate redemption or repurchase price of the securities of the company or trust during that year; and

“(B) the aggregate redemption or repurchase price of the securities of the company or trust during any prior fis-

cal year ending not more than 1 year before the date of enactment of the Investment Company Act Amendments of 1996, that were not used previously by the company or trust to reduce fees payable under this section.

“(3) INTEREST DUE ON LATE PAYMENT.—A company or trust paying the fee required by this subsection or any portion thereof more than 90 days after the end of the fiscal year of the company or trust shall pay to the Commission interest on unpaid amounts, at the average investment rate for Treasury tax and loan accounts published by the Secretary of the Treasury pursuant to section 3717(a) of title 31, United States Code. The payment of interest pursuant to this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2).

“(4) RULEMAKING AUTHORITY.—The Commission may adopt rules and regulations to implement this subsection.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the earlier of—

- (1) 1 year after the date of enactment of this Act; or*
- (2) the effective date of final rules or regulations issued in accordance with section 24(f) of the Investment Company Act of 1940, as amended by this section.*

SEC. 204. FACILITATING USE OF CURRENT INFORMATION IN ADVERTISING.

Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

“(g) ADDITIONAL PROSPECTUSES.—In addition to any prospectus permitted or required by section 10(a) of the Securities Act of 1933, the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a prospectus for purposes of section 5(b)(1) of that Act with respect to securities issued by a registered investment company. Such a prospectus, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of that Act.”.

SEC. 205. VARIABLE INSURANCE CONTRACTS.

(a) UNIT INVESTMENT TRUST TREATMENT.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended by adding at the end the following new subsection:

“(e) EXEMPTION.—

“(1) IN GENERAL.—Subsection (a) does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

“(2) LIMITATION ON SALES.—It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract—

“(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and

the risks assumed by the insurance company, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following the date of enactment of this subsection, the insurance company so represents in the registration statement for the contract; and

“(B) unless the insurance company—

“(i) complies with all other applicable provisions of this section, as if it were a trustee or custodian of the registered separate account;

“(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company, an annual statement of its financial condition, which most recent statement indicates that the insurance company has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000, or such other amount as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and

“(iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

“(3) FEES AND CHARGES.—For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

“(4) REGULATORY AUTHORITY.—The Commission may issue such rules and regulations to carry out paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors.”.

(b) PERIODIC PAYMENT PLAN TREATMENT.—Section 27 of the Investment Company Act of 1940 (15 U.S.C. 80a-27) is amended by adding at the end the following new subsection:

“(i)(1) This section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2).

“(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless—

“(A) such contract is a redeemable security; and

“(B) the insurance company complies with section 26(e) and any rules or regulations issued by the Commission under section 26(e).”.

SEC. 206. REPORTS TO THE COMMISSION AND SHAREHOLDERS.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-29) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

“(1) such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in

the registration statement of such company filed under this title;”;

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (g), and (h), respectively;

(3) by inserting after subsection (b) the following new subsection:

“(c)(1) *The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons in exercising its authority—*

“(A) *under subsection (f); and*

“(B) *under subsection (b)(1), if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.*

“(2) *Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on—*

“(A) *feasible alternatives that minimize the reporting burdens on registered investment companies; and*

“(B) *the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.*”;

(4) by inserting after subsection (e) (as redesignated by paragraph (2) of this section), the following new subsection:

“(f) *The Commission may, by rule, require that semi-annual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.*”; and

(5) in subsection (g) (as redesignated by paragraph (2) of this section), by striking “subsections (a) and (d)” and inserting “subsections (a) and (e)”.

SEC. 207. BOOKS, RECORDS, AND INSPECTIONS.

Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) **MAINTENANCE OF RECORDS.—**

“(1) **IN GENERAL.—**Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such person’s transactions with such registered company.

“(2) MINIMIZING COMPLIANCE BURDEN.—In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereafter in this section referred to as ‘subject persons’). Such steps shall include considering, and requesting public comment on—

“(A) feasible alternatives that minimize the recordkeeping burdens on subject persons;

“(B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;

“(C) the costs associated with maintaining the information that would be required to be reflected in such records; and

“(D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

“(b) EXAMINATIONS OF RECORDS.—

“(1) IN GENERAL.—All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

“(2) AVAILABILITY.—For purposes of examinations referred to in paragraph (1), any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

“(3) COMMISSION ACTION.—The Commission shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.”;

(2) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively;

(3) by inserting after subsection (b) the following new subsections:

“(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any internal compliance or audit records, or information contained therein, provided to the Commission under this section. Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of the jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section

shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(d) **DEFINITIONS.**—For purposes of this section—

“(1) the term ‘internal compliance policies and procedures’ means policies and procedures designed by subject persons to promote compliance with the Federal securities laws; and

“(2) the term ‘internal compliance and audit record’ means any record prepared by a subject person in accordance with internal compliance policies and procedures.”;

(4) in subsection (e), as redesignated, by inserting “**REGULATORY AUTHORITY.**—” before “The Commission”; and

(5) in subsection (f), as redesignated, by inserting “**EXEMPTION AUTHORITY.**—” before “The Commission”.

SEC. 208. PROHIBITION ON DECEPTIVE INVESTMENT COMPANY NAMES.

Section 35(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(d)) is amended to read as follows:

“(d) **DECEPTIVE OR MISLEADING NAMES.**—It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.”.

SEC. 209. AMENDMENTS TO DEFINITIONS.

(a) **EXCEPTED INVESTMENT COMPANIES.**—Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), by inserting after the first sentence the following: “Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.”;

(2) in subparagraph (A) of paragraph (1)—

(A) by inserting after “issuer,” the first place that term appears, the following: “and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company,”; and

(B) by striking “unless, as of” and all that follows through the end of the subparagraph and inserting a period;

(3) in paragraph (2)—

(A) by striking “and acting as broker,” and inserting “acting as broker, and acting as market intermediary,”;

(B) by inserting “(A)” after “(2)”; and

(C) by adding at the end the following new subparagraph:

“(B) For purposes of this paragraph—

“(i) the term ‘market intermediary’ means any person that regularly holds itself out as being willing contemporaneously to engage in, and that is regularly engaged in, the

business of entering into transactions on both sides of the market for a financial contract or one or more such financial contracts; and

“(ii) the term ‘financial contract’ means any arrangement that—

“(I) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets;

“(II) is in respect of securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function to any of the foregoing; and

“(III) is entered into in response to a request from a counter party for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counter party to such arrangement.”; and

(4) by striking paragraph (7) and inserting the following:

“(7)(A) Any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(B) Notwithstanding subparagraph (A), an issuer is within the exception provided by this paragraph if—

“(i) in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers, if—

“(I) such persons acquired any portion of the securities of such issuer on or before September 1, 1996; and

“(II) at the time at which such persons initially acquired the securities of such issuer, the issuer was excepted by paragraph (1); and

“(ii) prior to availing itself of the exception provided by this paragraph—

“(I) such issuer has disclosed to each beneficial owner, as determined under paragraph (1), that future investors will be limited to qualified purchasers, and that ownership in such issuer is no longer limited to not more than 100 persons; and

“(II) concurrently with or after such disclosure, such issuer has provided each beneficial owner, as determined under paragraph (1), with a reasonable opportunity to redeem any part or all of their interests in the issuer, notwithstanding any agreement to the con-

trary between the issuer and such persons, for that person's proportionate share of the issuer's net assets.

“(C) Each person that elects to redeem under subparagraph (B)(ii)(II) shall receive an amount in cash equal to that person's proportionate share of the issuer's net assets, unless the issuer elects to provide such person with the option of receiving, and such person agrees to receive, all or a portion of such person's share in assets of the issuer. If the issuer elects to provide such persons with such an opportunity, disclosure concerning such opportunity shall be made in the disclosure required by subparagraph (B)(ii)(I).

“(D) An issuer that is excepted under this paragraph shall nonetheless be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) relating to the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.

“(E) For purposes of determining compliance with this paragraph and paragraph (1), an issuer that is otherwise excepted under this paragraph and an issuer that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single issuer for purposes of determining whether the outstanding securities of the issuer excepted under paragraph (1) are beneficially owned by not more than 100 persons or whether the outstanding securities of the issuer excepted under this paragraph are owned by persons that are not qualified purchasers. Nothing in this subparagraph shall be construed to establish that a person is a bona fide qualified purchaser for purposes of this paragraph or a bona fide beneficial owner for purposes of paragraph (1).”.

(b) **QUALIFIED PURCHASER.**—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following new paragraph:

“(51)(A) ‘Qualified purchaser’ means—

“(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person's qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;

“(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

“(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets

to the trust, is a person described in clause (i), (ii), or (iv);
or

“(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

“(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

“(C) The term ‘qualified purchaser’ does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c), would be an investment company (hereafter in this paragraph referred to as an ‘excepted investment company’), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 3(c)(1)(A), that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as ‘pre-amendment beneficial owners’), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.”.

(c) CONFORMING AMENDMENTS.—Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) is amended—

- (1) by striking “(1)” and inserting “(A)”;
- (2) by striking “(2)” and inserting “(B)”;
- (3) by striking “(3)” and inserting “(C)”;
- (4) by inserting “(1)” after “(a)”;
- (5) by striking “As used” and inserting “(2) As used”; and
- (6) in paragraph (2)(C), as designated by paragraph (5) of this subsection—

(A) by striking “which are” and inserting the following: “which (i) are”; and

(B) by inserting before the period at the end, the following: “, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c)”.

(d) RULEMAKING REQUIRED.—

(1) IMPLEMENTATION OF SECTION 3(c)(1)(B).—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe rules to implement the requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)(B)), as amended by this section.

(2) IDENTIFICATION OF INVESTMENTS.—Not later than 180 days after the date of enactment of this Act, the Commission shall prescribe rules defining the term, or otherwise identifying, “investments” for purposes of section 2(a)(51) of the Investment Company Act of 1940, as added by this Act.

(3) **EMPLOYEE EXCEPTION.**—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 to permit the ownership of securities by knowledgeable employees of the issuer of the securities or an affiliated person without loss of the exception of the issuer under paragraph (1) or (7) of section 3(c) of that Act from treatment as an investment company under that Act.

(4) **BENEFICIAL OWNERSHIP.**—Not later than 180 days after the date of enactment of this Act, the Commission shall prescribe rules defining the term “beneficial owner” for purposes of section 3(c)(7)(B) of the Investment Company Act of 1940, as amended by this Act.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the earlier of—

(1) 180 days after the date of enactment of this Act; or

(2) the date on which the rulemaking required under subsection (d)(2) is completed.

SEC. 210. PERFORMANCE FEES EXEMPTIONS.

Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking “or” at the end;

(B) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(4) apply to an investment advisory contract with a company excepted from the definition of an investment company under section 3(c)(7) of title I of this Act; or

“(5) apply to an investment advisory contract with a person who is not a resident of the United States.”; and

(2) by adding at the end the following new subsection:

“(e) The Commission, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (a)(1), if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protections of subsection (a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with this section.”.

TITLE III—INVESTMENT ADVISERS SUPERVISION COORDINATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the “Investment Advisers Supervision Coordination Act”.

SEC. 302. FUNDING FOR ENHANCED ENFORCEMENT PRIORITY.

There are authorized to be appropriated to the Commission, for the enforcement of the Investment Advisers Act of 1940, not more than \$20,000,000 in each of fiscal years 1997 and 1998, in addition to any funds authorized to be appropriated to the Commission for this or other purposes.

SEC. 303. IMPROVED SUPERVISION THROUGH STATE AND FEDERAL COOPERATION.

(a) STATE AND FEDERAL RESPONSIBILITIES.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 203 the following new section:

“SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.

“(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—

“(1) IN GENERAL.—No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 203, unless the investment adviser—

“(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; or

“(B) is an adviser to an investment company registered under title I of this Act.

“(2) DEFINITION.—For purposes of this subsection, the term ‘assets under management’ means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

“(b) ADVISERS SUBJECT TO COMMISSION AUTHORITY.—

“(1) IN GENERAL.—No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

“(A) that is registered under section 203 as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State; or

“(B) that is not registered under section 203 because that person is excepted from the definition of an investment adviser under section 202(a)(11).

“(2) LIMITATION.—Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any State from investigating and bringing enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

“(c) EXEMPTIONS.—Notwithstanding subsection (a), the Commission, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the Commission of any person or class of persons to which the application of subsection (a) would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section.

“(d) FILING DEPOSITORIES.—The Commission may, by rule, require an investment adviser—

“(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any entity designated by the Commission for that purpose; and

“(2) to pay the reasonable costs associated with such filing.

“(e) STATE ASSISTANCE.—Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of investment advisers by the State.”.

(b) ADVISERS NOT ELIGIBLE TO REGISTER.—Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended—

(1) in subsection (c), in the matter immediately following paragraph (2), by inserting “and that the applicant is not prohibited from registering as an investment adviser under section 203A” after “satisfied”; and

(2) in subsection (h), in the second sentence—

(A) by striking “existence or” and inserting “existence,”; and

(B) by inserting “or is prohibited from registering as an investment adviser under section 203A,” after “adviser,”.

(c) DEFINITION OF “SUPERVISED PERSON”.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended—

(1) by striking “requires—” and inserting “requires, the following definitions shall apply:”; and

(2) by adding at the end the following new paragraph:

“(25) ‘Supervised person’ means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.”.

(d) CONFORMING AMENDMENT.—Section 203(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) is amended by striking “subsection (b) of this section” and inserting “subsection (b) and section 203A”.

SEC. 304. INTERSTATE COOPERATION.

Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–18a) is amended to read as follows:

“SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.

“(a) JURISDICTION OF STATE REGULATORS.—Nothing in this title shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder.

“(b) DUAL COMPLIANCE PURPOSES.—No State may enforce any law or regulation that would require an investment adviser to maintain any books or records in addition to those required under the laws of the State in which it maintains its principal place of business, if the investment adviser—

“(1) is registered or licensed as such in the State in which it maintains its principal place of business; and

“(2) is in compliance with the applicable books and records requirements of the State in which it maintains its principal place of business.

“(c) LIMITATION ON CAPITAL AND BOND REQUIREMENTS.—No State may enforce any law or regulation that would require an investment adviser to maintain a higher minimum net capital or to post any bond in addition to any that is required under the laws of the State in which it maintains its principal place of business, if the investment adviser—

“(1) is registered or licensed as such in the State in which it maintains its principal place of business; and

“(2) is in compliance with the applicable net capital or bonding requirements of the State in which it maintains its principal place of business.

“(d) NATIONAL DE MINIMIS STANDARD.—No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—

“(1) does not have a place of business located within the State; and

“(2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.”.

SEC. 305. DISQUALIFICATION OF CONVICTED FELONS.

(a) AMENDMENT.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

“(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

“(B) a substantially equivalent crime by a foreign court of competent jurisdiction.”.

(b) CONFORMING AMENDMENTS.—Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended—

(1) in subsection (e)(6) (as redesignated by subsection (a) of this section), by striking “this paragraph (5)” and inserting “this paragraph”;

(2) in subsection (f)—

(A) by striking “paragraph (1), (4), (5), or (7) of subsection (e) of this section” and inserting “paragraph (1), (5), (6), or (8) of subsection (e)”;

(B) by striking “paragraph (3)” and inserting “paragraph (4)”; and

(C) by striking “said subsection” each place that term appears and inserting “subsection”; and
 (3) in subsection (i)(1)(D), by striking “section 203(e)(5) of this title” and inserting “subsection (e)(6)”.

SEC. 306. INVESTOR ACCESS TO INFORMATION.

The Commission shall—

(1) provide for the establishment and maintenance of a readily accessible telephonic or other electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers and persons associated with investment advisers; and

(2) provide for prompt response to any inquiry described in paragraph (1).

SEC. 307. CONTINUED STATE AUTHORITY.

(a) **PRESERVATION OF FILING REQUIREMENTS.**—Nothing in this title or any amendment made by this title prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any documents filed with the Commission pursuant to the securities laws solely for notice purposes, together with a consent to service of process and any required fee.

(b) **PRESERVATION OF FEES.**—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of this Act, filing, registration, or licensing fees shall, notwithstanding the amendments made by this title, continue to be paid in amounts determined pursuant to the law, rule, regulation, or order, or other administrative action as in effect on the day before such date of enactment.

(c) **AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.**—

(1) **IN GENERAL.**—During the period beginning on the date of enactment of this Act and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require registration of any investment adviser that fails or refuses to pay the fees required by subsection (b) in or to such State, notwithstanding the limitations on the laws, rules, regulations, or orders, or other administrative actions of any State, or any political subdivision thereof, contained in subsection (a), if the laws of such State require registration of investment advisers.

(2) **DELAYS.**—For purposes of this subsection, delays in payment of fees or underpayments of fees that are promptly remedied in accordance with the applicable laws, rules, regulations, or orders, or other administrative actions of the relevant State shall not constitute a failure or refusal to pay fees.

SEC. 308. EFFECTIVE DATE.

(a) **IN GENERAL.**—This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

(b) **CONFORMING AMENDMENT.**—

(1) **IN GENERAL.**—Section 3(38)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(38)(B)) is

amended by inserting “or under the laws of any State” after “1940”.

(2) *SUNSET.*—The amendment made by paragraph (1) shall cease to be effective 2 years after the date of enactment of this Act.

TITLE IV—SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the “Securities and Exchange Commission Authorization Act of 1996”.

SEC. 402. PURPOSES.

The purposes of this title are—

(1) to authorize appropriations for the Commission for fiscal year 1997; and

(2) to reduce over time the rates of fees charged under the Federal securities laws.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 is amended to read as follows:

“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission \$300,000,000 for fiscal year 1997, in addition to any other funds authorized to be appropriated to the Commission.”.

SEC. 404. REGISTRATION FEES.

Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended to read as follows:

“(b) REGISTRATION FEE.—

“(1) *RECOVERY OF COST OF SERVICES.*—The Commission shall, in accordance with this subsection, collect registration fees that are designed to recover the costs to the government of the securities registration process, and costs related to such process, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

“(2) *FEE PAYMENT REQUIRED.*—At the time of filing a registration statement, the applicant shall pay to the Commission a fee that shall be equal to the sum of the amounts (if any) determined under the rates established by paragraphs (3) and (4). The Commission shall publish in the Federal Register notices of the fee rates applicable under this section for each fiscal year.

“(3) *GENERAL REVENUE FEES.*—The rate determined under this paragraph is a rate equal to \$200 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2007 and any succeeding fiscal year such rate is equal to \$67 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered. Fees collected during any fiscal year pursu-

ant to this paragraph shall be deposited and credited as general revenues of the Treasury.

“(4) OFFSETTING COLLECTION FEES.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate determined under this paragraph is a rate equal to the following amount per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered:

“(i) \$95 during fiscal year 1998;

“(ii) \$78 during fiscal year 1999;

“(iii) \$64 during fiscal year 2000;

“(iv) \$50 during fiscal year 2001;

“(v) \$39 during fiscal year 2002;

“(vi) \$28 during fiscal year 2003;

“(vii) \$9 during fiscal year 2004;

“(viii) \$5 during fiscal year 2005; and

“(ix) \$0 during fiscal year 2006 or any succeeding fiscal year.

“(B) LIMITATION; DEPOSIT.—Except as provided in subparagraph (C), no amounts shall be collected pursuant to this paragraph (4) for any fiscal year except to the extent provided in advance in appropriations acts. Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as offsetting collections in accordance with appropriations Acts.

“(C) LAPSE OF APPROPRIATIONS.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this paragraph at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

“(5) PRO RATA APPLICATION OF RATES.—The rates required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.”.

SEC. 405. TRANSACTION FEES.

(a) **AMENDMENT.—**Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

“SEC. 31. TRANSACTION FEES.

“(a) RECOVERY OF COST OF SERVICES.—The Commission shall, in accordance with this subsection, collect transaction fees that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

“(b) EXCHANGE-TRADED SECURITIES.—Every national securities exchange shall pay to the Commission a fee at a rate equal to $\frac{1}{300}$ of one percent of the aggregate dollar amount of sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange, except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sales. Fees

collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.

“(c) *OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED SECURITIES.*—Each national securities association shall pay to the Commission a fee at a rate equal to $\frac{1}{300}$ of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, and other evidences of indebtedness), except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.

“(d) *OFF-EXCHANGE-TRADES OF LAST-SALE-REPORTED SECURITIES.*—

“(1) *COVERED TRANSACTIONS.*—Each national securities association shall pay to the Commission a fee at a rate equal to $\frac{1}{300}$ of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under subsection (c), except that for fiscal year 2007, or any succeeding fiscal year, such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sale.

“(2) *LIMITATION; DEPOSIT OF FEES.*—Except as provided in paragraph (3), no amounts shall be collected pursuant to subsection (d) for any fiscal year, except to the extent provided in advance in appropriations Acts. Fees collected during any such fiscal year pursuant to this subsection shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission.

“(3) *LAPSE OF APPROPRIATIONS.*—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

“(e) *DATES FOR PAYMENT OF FEES.*—The fees required by subsections (b), (c), and (d) of this section shall be paid—

“(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

“(2) on or before September 30, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

“(f) *EXEMPTIONS.*—The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of mar-

kets and brokers and dealers, and the development of a national market system.

“(g) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee rates applicable under this section for each fiscal year.”.

(b) EFFECTIVE DATES; TRANSITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply with respect to transactions in securities that occur on or after October 1, 1997.

(2) OFF-EXCHANGE TRADES OF LAST SALE REPORTED TRANSACTIONS.—The amendment made by subsection (a) shall apply with respect to transactions described in section 31(d)(1) of the Securities Exchange Act of 1934 (as amended by subsection (a) of this section) that occur on or after September 1, 1997.

SEC. 406. TIME FOR PAYMENT.

Section 4(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(e)) is amended by inserting before the period at the end thereof the following: “and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission”.

SEC. 407. SENSE OF THE CONGRESS CONCERNING FEES.

It is the sense of the Congress that, in order to maintain the competitiveness of United States securities markets relative to foreign markets, no fee should be assessed on transactions involving portfolios of equity securities taking place at times of day characterized by low volume and during nontraditional trading hours.

TITLE V—REDUCING THE COST OF SAVING AND INVESTMENT

SEC. 501. EXEMPTION FOR ECONOMIC, BUSINESS, AND INDUSTRIAL DEVELOPMENT COMPANIES.

Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)) is amended by adding at the end the following new paragraph:

“(5)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

“(i) the organizational documents of the company state that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

“(ii) immediately following each sale of the securities of the company by the company or any underwriter for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class

basis, are held by persons who reside or who have a substantial business presence in that State;

“(iii) the securities of the company are sold, or proposed to be sold, by the company or by any underwriter for the company, solely to accredited investors, as that term is defined in section 2(a)(15) of the Securities Act of 1933, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

“(iv) the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term ‘investment company’ under paragraph (1) or (7) of section 3(c), other than—

“(I) any debt security that is rated investment grade by not less than 1 nationally recognized statistical rating organization; or

“(II) any security issued by a registered open-end investment company that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

“(B) Notwithstanding the exemption provided by this paragraph, section 9 (and, to the extent necessary to enforce section 9, sections 38 through 51) shall apply to a company described in this paragraph as if the company were an investment company registered under this title.

“(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

“(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or is not consistent with the protection of investors.

“(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.”.

SEC. 502. INTRASTATE CLOSED-END INVESTMENT COMPANY EXEMPTION.

Section 6(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking “\$100,000” and inserting “\$10,000,000, or such other amount as the Commission may set by rule, regulation, or order”.

SEC. 503. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.

Section 2(a)(46)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

- (1) in clause (ii), by striking “or” at the end;
- (2) by redesignating clause (iii) as clause (iv); and
- (3) by inserting after clause (ii) the following:

“(iii) it has total assets of not more than \$4,000,000, and capital and surplus (shareholders’ equity less retained earnings) of not less than \$2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or”.

SEC. 504. DEFINITION OF BUSINESS DEVELOPMENT COMPANY.

Section 2(a)(48)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by adding at the end the following: “provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this title; and”.

SEC. 505. ACQUISITION OF ASSETS BY BUSINESS DEVELOPMENT COMPANIES.

Section 55(a)(1)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—

- (1) by striking “or from any person” and inserting “from any person”; and
- (2) by inserting before the semicolon “, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”.

SEC. 506. CAPITAL STRUCTURE AMENDMENTS.

Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-60(a)) is amended—

- (1) in paragraph (2), by striking “if such business development company” and all that follows through the end of the paragraph and inserting a period;
- (2) in paragraph (3)(A)—
 - (A) by striking “senior securities representing indebtedness accompanied by”;
 - (B) by inserting “accompanied by securities,” after “of such company,”; and
 - (C) in clause (ii), by striking “senior”; and
- (3) in paragraph (3)—
 - (A) in subparagraph (A), by striking “and” at the end;
 - (B) in subparagraph (B), by striking the period at the end of clause (iv) and inserting “; and”; and
 - (C) by inserting immediately after subparagraph (B) the following new subparagraph:

“(C) a business development company may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

“(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

“(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 57(o)) of the directors of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.”.

SEC. 507. FILING OF WRITTEN STATEMENTS.

Section 64(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–63(b)(1)) is amended by inserting “and capital structure” after “portfolio”.

SEC. 508. CHURCH EMPLOYEE PENSION PLANS.

(a) AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended by adding at the end the following new paragraph:

“(14) Any church plan described in section 414(e) of the Internal Revenue Code of 1986, if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries, or any company or account that is—

“(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of the Internal Revenue Code of 1986; and

“(B) substantially all of the activities of which consist of—

“(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under the Internal Revenue Code of 1986; or

“(ii) administering or providing benefits pursuant to church plans.”.

(b) AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following new paragraph:

“(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.”.

(c) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) EXEMPTED SECURITIES.—Section 3(a)(12)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)) is amended—

(A) in clause (v), by striking “and” at the end;

(B) by redesignating clause (vi) as clause (vii); and

(C) by inserting after clause (v) the following new clause:

“(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and”.

(2) *EXEMPTION FROM BROKER-DEALER PROVISIONS.*—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

“(g) *CHURCH PLANS.*—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, company, account person, or entity, acting within the scope of that person’s employment or activities with respect to such plan, shall be deemed to be a ‘broker’, ‘dealer’, ‘municipal securities broker’, ‘municipal securities dealer’, ‘government securities broker’, ‘government securities dealer’, ‘clearing agency’, or ‘transfer agent’ for purposes of this title—

“(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

“(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.”.

(d) *AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.*—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (3), by striking “or” at the end;

(2) in paragraph (4), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(5) any plan described in section 414(e) of the Internal Revenue Code of 1986, any person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.”.

(e) *AMENDMENT TO THE TRUST INDENTURE ACT OF 1939.*—Section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C.

77ddd(4)(A)) is amended by striking “or (11)” and inserting “(11), or (14)”.

(f) *PROTECTION OF CHURCH EMPLOYEE BENEFIT PLANS UNDER STATE LAW.*—

(1) *REGISTRATION REQUIREMENTS.*—Any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section, and any offer, sale, or purchase thereof, shall be exempt from any law of a State that requires registration or qualification of securities.

(2) *TREATMENT OF CHURCH PLANS.*—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section, and no trustee, director, officer, or employee of or volunteer for any such plan, person, entity, company, or account shall be required to qualify, register, or be subject to regulation as an investment company or as a broker, dealer, investment adviser, or agent under the laws of any State solely because such plan, person, entity, company, or account buys, holds, sells, or trades in securities for its own account or in its capacity as a trustee or administrator of or otherwise on behalf of, or for the account of, or provides investment advice to, for, or on behalf of, any such plan, person, or entity or any company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section.

(g) *AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.*—Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following new subsections:

“(g) *DISCLOSURE TO CHURCH PLAN PARTICIPANTS.*—A person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 3(c)(14) shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that—

“(1) the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this title, the Securities Act of 1933, the Securities Exchange Act of 1934, or State securities laws; and

“(2) plan participants and beneficiaries therefore will not be afforded the protections of those provisions.

“(h) *NOTICE TO COMMISSION.*—The Commission may issue rules and regulations to require any person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 3(c)(14) to file a notice with the Commission containing such information and in such form as the Commission

may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.”.

SEC. 509. PROMOTING GLOBAL PREEMINENCE OF AMERICAN SECURITIES MARKETS.

It is the sense of the Congress that—

(1) the United States and foreign securities markets are increasingly becoming international securities markets, as issuers and investors seek the benefits of new capital and secondary market opportunities without regard to national borders;

(2) as issuers seek to raise capital across national borders, they confront differing accounting requirements in the various regulatory jurisdictions;

(3) the establishment of a high-quality comprehensive set of generally accepted international accounting standards in cross-border securities offerings would greatly facilitate international financing activities and, most significantly, would enhance the ability of foreign corporations to access and list in United States markets;

(4) in addition to the efforts made before the date of enactment of this Act by the Commission to respond to the growing internationalization of securities markets, the Commission should enhance its vigorous support for the development of high-quality international accounting standards as soon as practicable; and

(5) the Commission, in view of its clear authority under law to facilitate the access of foreign corporations to list their securities in United States markets, should report to the Congress, not later than 1 year after the date of enactment of this Act, on progress in the development of international accounting standards and the outlook for successful completion of a set of international standards that would be acceptable to the Commission for offerings and listings by foreign corporations in United States markets.

SEC. 510. STUDIES AND REPORTS.

(a) IMPACT OF TECHNOLOGICAL ADVANCES.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study of—

(i) the impact of technological advances and the use of on-line information systems on the securities markets, including steps that the Commission has taken to facilitate the electronic delivery of prospectuses to institutional and other investors;

(ii) how such technologies have changed the way in which the securities markets operate; and

(iii) any steps taken by the Commission to address such changes.

(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Commission shall consider how the Commission has adapted its enforcement policies and practices in response to technological developments with regard to—

(i) disclosure, prospectus delivery, and other customer protection regulations;

(ii) intermediaries and exchanges in the domestic and international financial services industry;

(iii) reporting by issuers, including communications with holders of securities;

(iv) the relationship of the Commission with other national regulatory authorities and organizations to improve coordination and cooperation; and

(v) the relationship of the Commission with State regulatory authorities and organizations to improve coordination and cooperation.

(2) *REPORT*.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(b) *SHAREHOLDER PROPOSALS*.—

(1) *STUDY*.—The Commission shall conduct a study of—

(A) whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 has been impaired by recent statutory, judicial, or regulatory changes; and

(B) the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements.

(2) *REPORT*.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1), together with any recommendations for regulatory or legislative changes that it considers necessary to improve shareholder access to proxy statements.

(c) *PREFERENCING*.—

(1) *STUDY*.—The Commission shall conduct a study of the impact on investors and the national market system of the practice known as “preferencing” on one or more registered securities exchanges, including consideration of—

(A) how preferencing impacts—

(i) the execution prices received by retail securities customers whose orders are preferenced; and

(ii) the ability of retail securities customers in all markets to obtain executions of their limit orders in preferenced securities; and

(B) the costs of preferencing to such customers.

(2) *REPORT*.—Not later than 6 months after the date of enactment of this Act, the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(3) *DEFINITION*.—For purposes of this subsection, the term “preferencing” refers to the practice of a broker acting as a dealer on a national securities exchange, directing the orders of customers to buy or sell securities to itself for execution under rules that permit the broker to take priority in execution over same-priced orders or quotations entered prior in time.

(d) *BROKER-DEALER UNIFORMITY*.—

(1) *STUDY.*—The Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of the impact of disparate State licensing requirements on associated persons of registered brokers or dealers and methods for States to attain uniform licensing requirements for such persons.

(2) *REPORT.*—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the Congress a report on the study conducted under paragraph (1). Such report shall include recommendations concerning appropriate methods described in paragraph (1)(B), including any necessary legislative changes to implement such recommendations. And the Senate agree to the same.

TOM BLILEY,
JACK FIELDS,
MICHAEL G. OXLEY,
BILLY TAUZIN,
DAN SCHAEFER,
NATHAN DEAL,
DAN FRISA,
RICK WHITE,
JOHN D. DINGELL,
EDWARD J. MARKEY,
BART GORDON,
ELIZABETH FURSE,
RON KLINK,

Managers on the Part of the House.

ALFONSE D'AMATO,
PHIL GRAMM,
ROBERT F. BENNETT,
PAUL S. SARBANES,
CHRIS DODD,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3005) to amend the Federal securities laws in order to promote efficiency and capital formation in the financial markets, and to amend the Investment Company Act of 1940 to promote more efficient management of mutual funds, protect investors, and provide more effective and less burdensome regulation, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

The Managers agreed to the following resolution of issues between the House and Senate bills.

The development and growth of the nation's capital markets has prompted the Congress to examine the need for legislation modernizing and rationalizing our scheme of securities regulation to promote investment, decrease the cost of capital, and encourage competition. The Managers have sought to achieve these goals while also advancing the historic commitment of the securities laws to promoting the protection of investors. In particular, the system of dual Federal and state securities regulation has resulted in a degree of duplicative and unnecessary regulation. Securities offerings and the brokers and dealers engaged in securities transactions are all currently subject to a dual system of regulation that, in many instances, is redundant, costly, and ineffective.

During the course of consideration of this legislation, the Congress received testimony indicating that this duplicative regulation tends to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets. Testimony also indicated that technological change has transformed the capital raising process, necessitating changes in the regulatory scheme to facilitate the flow of information to potential investors and reduce the marginal cost of capital to firms. The Managers have sought to eliminate duplicative and unnecessary regulatory burdens while preserving important investor protections by reallocating responsibility over the regulation of the nation's se-

curities markets in a more logical fashion between the Federal government and the states.

With respect to securities offerings, the Managers have allocated regulatory responsibility between the Federal and state governments based on the nature of the securities offering. Some securities offerings, such as those made by investment companies, and certain private placements are inherently national in nature, and are therefore subject to only Federal regulation. Smaller, regional, and intrastate securities offerings remain subject to state regulation. The Managers have preserved the authority of the states to protect investors through application of state antifraud laws. This preservation of authority is intended to permit state securities regulators to continue to exercise their police power to prevent fraud and broker-dealer sales practice abuses, such as churning accounts or misleading customers. It does not preserve the authority of state securities regulators to regulate the securities registration and offering process through commenting on and/or imposing requirements on the contents of prospectuses or other offering documents, whether prior to their use in a state or after such use. The Conference Report requires the SEC to conduct a study on the lack of uniformity in state regulation of non-covered securities. Such study shall focus on the effect of such uniformity or lack thereof on the cost of capital, innovation and technological development in securities markets, and duplicative regulation with respect to securities issuers, including small business.

The National Securities Markets Improvement Act of 1996 eliminates burdens and enhances innovation and efficiency for investment companies. Among these changes are provisions to facilitate the creation of funds, including funds of funds comprising unit investment trusts, to facilitate and streamline the registration process for investment companies, and improve the efficiency and usefulness of investment company advertising. In addition, the legislation grants the Securities and Exchange Commission additional authority regarding investment company books and records, and the preparation of shareholder reports. This authority is limited, however, and permits the Commission only to examine records that the Commission requires investment companies to maintain for inspection. The legislation does not grant the Commission authority to inspect any other documents that an investment company may maintain.

The Managers agreed to include amendments to the Securities Act of 1933, and the Securities and Exchange Act of 1934 to eliminate duplication, promote efficiency and protect investors.

The Managers agreed to include amendments to the Investment Company Act of 1940 to eliminate duplication, promote efficiency and protect investors.

The Managers agreed to include reauthorization of the SEC to reauthorize the Commission, and to reduce over time the fees collected by the agency. It is the intent of the Managers that at the end of the applicable ten year period, the SEC collect in fees a sum approximately equal to the cost of running the agency.

The Managers agreed to include certain amendments to the Investment Advisers Act of 1940 to eliminate duplication, promote efficiency, and protect investors.

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 JACK FIELDS,
 MICHAEL G. OXLEY,
 BILLY TAUZIN,
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 RON KLINK,

Managers on the Part of the House.

ALFONSE D'AMATO,
 PHIL GRAMM,
 ROBERT F. BENNETT,
 PAUL S. SARBANES,
 CHRIS DODD,

Managers on the Part of the Senate.

